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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/556,389	04/24/00	MCGRAW	M 000309.00005

002779 QM32/1018  
BLANK ROME COMISKY & MCCAULEY  
WIGMAN COHEN LEITNER & MYERS  
THE FARRAGUT BUILDING SUITE 1000  
900 17TH STREET NW  
WASHINGTON DC 20006

EXAMINER

GETZOW, S

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 10/18/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/556,389

Applicant(s)  
McGraw et al

Examiner  
Scott M. Getzow

Group Art Unit  
3762



☐ Responsive to communication(s) filed on \_\_\_\_\_.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 43-56 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 43-56 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3762

***Reissue Applications***

1. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The reissue declaration accompanying the present application describes claims 1-42, and how modifications to those claims overcomes errors present in the original patent. However, in the present case, no mention is made of claims 43-56, which are the claims which have been submitted as overcoming an alleged error.

***Claim Objections***

2. Claims 44-48 are objected to because of the following informalities: Claim 44 apparently should depend from claim 43 not claim 45. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

Art Unit: 3762

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 43-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brodard '781.

Brodard teaches a device which can be programmed via a disk 42 with a stimulation regimen. As taught in the patent, in column 12, lines 41+, adjustment to the stimulation parameters stored on the disk can be 'registered and memorised' and therefore can be used at a later time. Further, Brodard recognizes the problem of compliance by the patient to the unsupervised treatment using the stimulator, as mentioned in column 14, lines 30+. Thus, Brodard attempts to solve the same problem that applicant attempts to solve. Also, storage of the length of time the stimulator was used, as well as the use of a header, and EEPROM, are all considered to be obvious over the patent to Brodard.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Getzow whose telephone number is (703) 308-2997.

smg



October 16, 2000